

United States General Accounting Office

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**GAO**

Report to the Honorable  
Tom Harkin, U.S. Senate

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August 1989

**EL SALVADOR**

**Transfers of Military  
Assistance Fuels**



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United States  
General Accounting Office  
Washington, D.C. 20548

National Security and  
International Affairs Division

B-234033

August 29, 1989

The Honorable Tom Harkin  
United States Senate

Dear Senator Harkin:

In response to your request, we determined whether fuel purchased with U.S. Military Assistance Program (MAP) funds for El Salvador had been improperly transferred to aircrews involved in a supply operation supporting Nicaraguan Democratic Resistance forces, commonly referred to as the Contras, and, if so, whether or not any U.S. personnel approved or were aware of the transfer. As agreed with your office, we also reviewed efforts by the State Department to investigate allegations of these transfers. In addition, we developed information on other transfers of MAP-funded fuel in El Salvador.

## Results in Brief

We found that, during 1986 and 1988, the Salvadoran Air Force (FAS) transferred MAP-funded fuel at Ilopango Air Base in El Salvador to third parties without U.S. government consent.<sup>1</sup> These transfers involved 61,107 gallons of aviation gas and commercial jet fuel sold to aircrews and pilots involved in the Contra supply operation and an unknown quantity and type of fuel provided to private and foreign government parties.<sup>2</sup> These transfers violated sales agreements between the U.S. and Salvadoran governments and are required to be reported to Congress under the Arms Export Control Act (22 U.S.C. 2751 *et seq.*).

We found no evidence that any U.S. government personnel approved or were aware of any transfers of MAP-funded fuel to third parties. In response to requests from you and the Arms Control and Foreign Policy Caucus in 1987, the State Department, with assistance from the Defense Security Assistance Agency (DSAA) and the U.S. Embassy in El Salvador, investigated allegations of transfers of MAP-funded aviation gas to the Contra supply operation. The investigation concluded that such transfers could not be confirmed. However, had the scope of the investigation

<sup>1</sup>Our review did not identify any evidence indicating that any transfers to third parties occurred during 1987.

<sup>2</sup>We could not determine whether fuel was sold or given to the private and foreign government parties because the FAS Commander would not discuss specific details.

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been expanded to include questioning those persons with direct knowledge of the operation about refueling activities at Ilopango, the transfers could have been confirmed.

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## Delivery of MAP-Funded Fuel and Restrictions on Transfers

As of November 1988, the United States had spent \$21.1 million in MAP grant funds to purchase fuel for the Salvadoran military, including \$12.7 million for commercial jet fuel and aviation gas supplied to the FAS. The first deliveries of MAP-funded commercial jet fuel and aviation gas were made on August 21, 1985, and August 16, 1986, respectively. Prior to delivery of MAP-funded fuel, the Salvadoran Ministry of Defense purchased fuel with Salvadoran national defense funds.

Under the Arms Export Control Act, the President cannot sell defense items or services through the U.S. Foreign Military Sales (FMS) program unless recipient countries agree not to transfer title or possession to third parties without prior U.S. government consent. Effective with the fiscal year 1982 MAP appropriation, MAP grant funds were merged into the FMS trust fund. As a result, items and services purchased with these funds, including fuel supplied to the Salvadoran military, are procured through the FMS program and are subject to restrictions under the act. The requirement for obtaining U.S. consent for third-party transfers of MAP-funded items, such as fuel, is specified in the FMS sales agreements signed by the U.S. and Salvadoran governments.

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## Transfers to the Contra Supply Operation

From April to September 1986, the FAS transferred MAP-funded fuel without U.S. consent to aircrews employed by the Enterprise, an organization created to manage the Contra supply operation, and to pilots employed by Southern Air Transport, a U.S. company providing charter aircraft to the Enterprise. These parties purchased 61,107 gallons of aviation gas and commercial jet fuel from the FAS for \$109,335 at a time when the FAS fuel tanks contained only MAP-funded fuel. During the supply operation, the Enterprise aircrews and Southern Air pilots air-dropped supplies to Contra forces in Nicaragua. Southern Air pilots also delivered munitions from Europe to Central America and transported supplies and Enterprise personnel to Ilopango from the United States.

We found no evidence that any U.S. government personnel approved or were aware of the transfer. Although aware that these parties refueled at Ilopango, officials assigned to the U.S. Military Group (MILGROUP) at the U.S. Embassy in El Salvador during 1986 stated that they did not

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know the FAS tanks contained only MAP-funded fuel and that the possibility of a transfer did not occur to them.

At the request of Lieutenant Colonel Oliver North of the National Security Council staff, Mr. Felix Rodriguez, a private individual supporting the Contra supply operation, arranged for aircraft involved in the operation to operate at Ilopango. In a letter dated September 20, 1985, North requested Rodriguez to obtain permission from the FAS Commander for the use of service space. Mr. Rodriguez stated that the Commander agreed to provide service space and that after the supply operation began, the Commander also permitted the Enterprise aircrews and Southern Air pilots to refuel aircraft at the base. He further stated that no one else was involved in making this arrangement, including former MILGROUP officials.

Former MILGROUP officials said that they knew the supply operation existed but that they had no role in arranging for the use of base facilities or refueling privileges. Our review did not identify any evidence to indicate that MILGROUP officials were involved in making such arrangements.

In 1987, you and the Arms Control and Foreign Policy Caucus requested the State Department to investigate allegations that MAP-funded aviation gas was transferred to the Contra supply operation at Ilopango. In its investigation, State was assisted by DSAA and the U.S. Embassy, including the MILGROUP, in El Salvador. The investigation focused only on aviation gas because no other type of fuel was alleged to have been transferred. Because more than one source of aviation gas was available at Ilopango<sup>3</sup> and delivery rates for MAP-funded aviation gas in 1986 and 1987 showed a consistent pattern of consumption, State Department, DSAA, and MILGROUP officials investigating the matter concluded that no substantial diversion had occurred.

We found that during the State Department investigation no one with direct knowledge of the supply operation was questioned about refueling activities at Ilopango. The Enterprise aircrews, FAS Commander, and former MILGROUP officials knew that the aircrews had refueled from FAS tanks in August and September 1986. If officials investigating the matter had expanded their inquiry, they could have determined that these

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<sup>3</sup>Ilopango Air Base consists of a military side occupied by FAS facilities and a civilian side occupied by a commercial airport. Aviation gas is available on both sides of the base.

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refuelings occurred when the FAS tanks contained only MAP-funded aviation gas and thus could have confirmed the alleged transfers.

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## Transfers to Other Third Parties

Without obtaining U.S. consent, the FAS also transferred MAP-funded fuel to third parties other than those involved in the Contra supply operation. The FAS Commander told us that he has occasionally allowed other third parties to refuel aircraft at Ilopango, including privately owned aircraft involved in earthquake relief efforts in October 1986 and a Mexican government aircraft on official business in December 1988. Because the Commander would not discuss specific details, we were unable to determine the number of third-party refuelings, quantity and type of fuel involved, or whether any payments were made.

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## Reporting Third-Party Transfers to Congress

The Arms Export Control Act requires the President to report any unauthorized third-party transfer to the Congress, as well as those unauthorized third-party transfers that may have constituted "substantial" violations of FMS sales agreements. A violation may be substantial based on either the quantities involved or the gravity of the consequences of a transfer. Section 3(c)(2) of the act requires that the President report to Congress when a substantial violation of a sales agreement may have occurred. Section 3(e) requires a report of any unauthorized third-party transfer.<sup>4</sup> Executive Order 11958 delegates these reporting responsibilities to the Secretary of State.

The act also provides for penalties against any recipient country that has committed a substantial violation involving an unauthorized third-party transfer. Specifically, section 3(c)(3) of the act indicates that a country shall be deemed ineligible for credits and guaranties<sup>5</sup> in the case of a substantial violation if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution. However, the act does not include the revocation of eligibility for MAP grant funds among the specific penalties triggered by a substantial violation involving an unauthorized third-party transfer. Because the Salvadoran government receives MAP grant funds rather than credits or guaranties, the penalties provided for in the act are not applicable to the unauthorized transfers of MAP-funded fuel by the FAS.

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<sup>4</sup>Although a report under section 3(c)(2) duplicates, in some respects, the requirement under section 3(e) to report any unauthorized third-party transfer, a report under section 3(c)(2) has the added effect of informing the Congress that a "substantial" violation may have occurred.

<sup>5</sup>Recipient countries use credits and guaranties to finance purchases of defense items and services.

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## Transfers to the U.S. Government

From August 1985 to October 1988, the FAS transferred at least 942,509 gallons of MAP-funded commercial jet fuel to the U.S. government for refueling U.S. military aircraft and Southern Air aircraft on U.S. government contract flights. For this fuel, the FAS received at least \$691,732 in direct payments,<sup>6</sup> and an additional \$805,795 was credited to the FMS trust fund.<sup>7</sup> State Department and DSAA officials stated that these transfers did not involve third parties because the U.S. government originally provided the fuel. We believe that this position is reasonable.

However, due to concern about the propriety of direct payments to the FAS and lack of U.S. control over the use of these funds, DSAA officials implemented a credit system in April 1987 to pay for fuel sold to refuel U.S. military aircraft. This system resulted in the return of sales proceeds to a holding account for El Salvador in the FMS trust fund. DSAA officials stated they were not aware that Southern Air pilots on U.S. government contract flights paid the FAS directly for fuel and thus did not consider such payments when implementing the new system.

According to DSAA officials, recipient countries are entitled to keep the proceeds from sales of defense items procured through the FMS program, including those funded with MAP grant financing. FMS sales agreements provide that recipient countries shall accept the title to items covered under the agreement. DSAA officials stated that because the United States does not retain reversionary rights to the title, countries are not required to return items when no longer needed, or the proceeds if they are sold. They stated that MAP-funded fuel supplied to the FAS and proceeds from its sale therefore belonged to the Salvadoran government.

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## Conclusions and Recommendations

Because the FAS transferred MAP-funded fuel to the Contra supply operation in 1986 and other third parties in 1986 and 1988 without U.S. consent, it violated U.S.-Salvadoran FMS sales agreements in effect during those years; thus, the transfers are required to be reported to Congress under the Arms Export Control Act. Therefore, we recommend that the Secretary of State report these transfers as a violation of the 1986 and 1988 sales agreements under section 3(e) of the act.

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<sup>6</sup>Figures do not reflect total gallons and payments because data for certain periods in 1985, 1986, and 1987 were incomplete.

<sup>7</sup>The FMS trust fund consists of individual holding accounts for recipient countries. These accounts contain funds used to finance purchases of defense items and services through the FMS program.

The FAS has received direct payments for MAP-funded fuel sold to the U.S. government and third parties since 1985. Although it appears that recipient countries, including El Salvador, are entitled to the proceeds from the sale of MAP-funded items procured through the FMS program, we are concerned that countries are able to generate cash from the FMS program and are not subject to controls over its use. The Arms Export Control Act authorizes the U.S. government to provide military assistance to recipient countries through the sale and lease of defense items; however, we found no provision in the act authorizing cash transfers as a means of assistance.

We support DSAA's action to credit proceeds from sales of MAP-funded fuel by the FAS to the FMS trust fund account for El Salvador and believe that this procedure should be applied in most cases. Therefore, we recommend that the Secretary of Defense take steps to ensure that proceeds from the sale of MAP-funded items will normally be returned to the FMS trust fund account of the recipient country.

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## Matter for Congressional Consideration

Since the Salvadoran government receives MAP grant funds rather than credits or guaranties, penalties under the Arms Export Control Act would not have been applicable to the unauthorized third-party transfers of MAP-funded fuel by the FAS if the transfers were determined to have constituted a substantial violation. If the Congress wishes to include the revocation of eligibility for MAP grant funds among the specific penalties that may be triggered under the act by a substantial violation involving an unauthorized third-party transfer, it will need to amend the act.

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## Agency Comments

State concurred that the transfer of MAP-funded fuel to the Contra supply operation violated the 1986 sales agreement between the U.S. and Salvadoran governments and must be reported to Congress under section 3(e) of the Arms Export Control Act. (See app. III.) On June 30, 1989, State submitted a report to Congress in compliance with the act.

In a draft of this report we expressed the view that the transfer of fuel to the Contra supply operation may have constituted a substantial violation of the 1986 sales agreement because it occurred at a time when the U.S. government was prohibited by law from supporting Contra military operations through the use of military assistance funds. Thus, even if the Salvadoran government had requested U.S. consent, granting such consent would have been inconsistent with this prohibition. Further,

other legislative prohibitions in effect would have prevented the United States from supplying fuel itself to the Contra supply operation. The draft report recommended that the Secretary of State determine whether or not the transfer to the Contra supply operation may have constituted a substantial violation.

In its comments on the draft, State concluded that neither the quantity of fuel transferred nor the gravity of the consequences of the transfer suggests that a substantial violation occurred. Specifically, State noted that the quantity transferred represented a fraction of the total gallons of fuel provided to the FAS, the transferred fuel did not sustain the resupply effort over any extended period of time, and fuel could have been readily obtained from other commercial sources.

State also noted that the prohibition on the use of military assistance funds to support Contra military operations applied to U.S., not foreign, personnel and the fact that the transfer occurred when the prohibition existed was not sufficient by itself to find that a substantial violation occurred. Because State's response in effect represents the Secretary's determination and responds to the recommendation in our draft report, we deleted the recommendation from our final report.

State also expressed the view that amending the Arms Export Control Act to include revocation of eligibility for MAP grant funds among the specific penalties triggered by a substantial violation, as we suggested as a matter for congressional consideration, was not necessary. State noted that the President has discretionary authority to impose sanctions, including terminating MAP grant funds, regardless of the penalty provisions contained in the act. We agree that the President has such authority; however, if the Congress wishes to include the revocation of eligibility for MAP grant funds among the specific penalties that may be triggered under the act, an amendment will be required.

In its comments, DOD agreed that the transfer of MAP-funded fuel to the Contra supply operation violated the 1986 sales agreement. (See app. IV.) However, DOD also said that it did not believe a substantial violation had occurred.

Our draft report contained a recommendation that the standard FMS sales agreement be amended to include a provision requiring that proceeds from sales of MAP-funded items be returned to the FMS trust fund. While DOD shared our concern that U.S. grant assistance not be used as a way for a recipient country to generate cash, it expressed the view that

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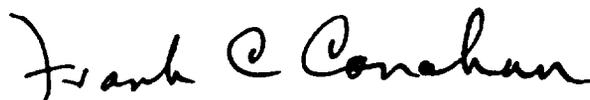
a more appropriate approach to address this issue would be to amend the DOD Security Assistance Manual to provide for the return of proceeds as a condition of granting U.S. consent for sales. Such policy would be applicable to cases in which a recipient country requested consent to sell items within 3 years after the items enter its inventory. DOD suggested this time period to eliminate the concern that a recipient country could subvert the purpose of the FMS program by quickly turning MAP funds into cash. DOD stated that, on the other hand, the recipient country should be able to retain proceeds where it is clear that the items being sold were purchased in good faith and had substantially served the purpose for which they were acquired.

The approach proposed by DOD seems to be reasonable, and we therefore modified our recommendation. At the same time, it would seem likely that the revised policy would in many, if not most, cases require that the conditions governing the return of proceeds be specified in the applicable sales agreements.

Details of our review are contained in appendix I. Appendix II describes our objectives, scope, and methodology.

Copies of this report will be sent to interested congressional committees, the Secretary of State, the Secretary of Defense, and other interested parties. The report was prepared under the direction of Joseph E. Kelley, Director, Security and International Relations Issues. Other major contributors are listed in appendix V.

Sincerely yours,



Frank C. Conahan  
Assistant Comptroller General

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**Abbreviations**

AVGAS	Aviation Gas
COMJET	Commercial Jet
DOD	Department of Defense
DSAA	Defense Security Assistance Agency
FAS	Salvadoran Air Force
FMS	Foreign Military Sales
MAC	Military Airlift Command
MAP	Military Assistance Program
MILGROUP	Military Group
NHAO	Nicaraguan Humanitarian Assistance Office

# Transfers of U.S. Military Assistance Program-Funded Fuel in El Salvador

Since fiscal year 1985, the United States has provided \$435.1 million in Military Assistance Program (MAP) grants to El Salvador. These funds are used to procure defense items and services, including ammunition, fuel, rotary and fixed wing aircraft, spare parts, and training. During the past 3 years, MAP funding has focused on modernizing and sustaining Salvadoran armed forces to improve their effectiveness against insurgency.

## Delivery of MAP-Funded Fuel

The U.S. government contracts with commercial companies to supply fuel to countries that receive MAP-funded fuel. The Defense Fuel Supply Center solicits bids and awards contracts annually on behalf of the U.S. government. The Center has awarded the MAP fuel contract for El Salvador to Exxon International Company since funding became available for this purpose in 1985. As of November 1988, the United States had spent \$21.1 million to purchase fuel for the Salvadoran military, including \$12.7 million for commercial jet (COMJET) fuel and aviation gas (AVGAS) supplied to the Salvadoran Air Force (FAS). The remaining \$8.4 million was for diesel fuel supplied to the Salvadoran Army.

Table I.1 provides data on gallons and cost of MAP-funded fuel supplied to the FAS from 1985 to 1989 by contract year.

**Table I.1: MAP-Funded Fuel Supplied to the FAS (1985-89)**

Dollars in thousands

	1985-86		1986-87		1987-88		1988-89 <sup>a</sup>		1985-89	
	Gallons	Cost	Gallons	Cost	Gallons	Cost	Gallons	Cost	Gallons	Cost
COMJET	1,235	\$1,803	3,150	\$4,850	1,816	\$2,766	1,101	\$1,275	7,302	\$10,694
AVGAS	0	0	510	732	597	780	395	479	1,502	1,991
<b>Total</b>	<b>1,235</b>	<b>\$1,803</b>	<b>3,660</b>	<b>\$5,582</b>	<b>2,413</b>	<b>\$3,546</b>	<b>1,496</b>	<b>\$1,754</b>	<b>8,804</b>	<b>\$12,685</b>

<sup>a</sup>Figures reflect deliveries as of November 1988.

An Exxon affiliate in San Salvador—Esso Standard Oil, S.A. Ltd. —oversees the MAP fuel contract and arranges for deliveries. Esso trucks deliver fuel from a local refinery<sup>1</sup> to Ilopango Air Base, the FAS headquarters near San Salvador. The base has three underground fuel tanks: two 25,000-gallon tanks for COMJET and one 10,000-gallon tank for AVGAS. The first delivery of MAP-funded COMJET occurred on August 21, 1985, and of MAP-funded AVGAS on August 16, 1986.

<sup>1</sup>The refinery, partially owned by Esso, manufactures COMJET fuel from crude products imported from Mexico and Venezuela. AVGAS is imported from the Caribbean.

According to Esso officials, prior to delivery of MAP-funded fuel, the FAS tanks contained COMJET fuel and AVGAS purchased by the Salvadoran Ministry of Defense with Salvadoran national defense funds. After MAP funding became available, the Ministry no longer purchased any fuel. Therefore, fuel funded by the Ministry was eventually replaced with MAP-funded fuel. As of August 29, 1985, MAP funds accounted for all fuel contained in the two COMJET tanks. As of August 20, 1986, MAP funds also accounted for all fuel contained in the AVGAS tank.

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## Restrictions on Transfers

The Arms Export Control Act (22 U.S.C. 2751 *et seq.*) establishes restrictions on selling defense items and services under the U.S. Foreign Military Sales (FMS) program. Section 3 of the act states that the President cannot sell any defense item or service unless the recipient country has agreed not to transfer title or possession without prior U.S. government consent. In fiscal year 1982, MAP grant funds were merged into the FMS trust fund account. As a result, items and services purchased with these funds, including fuel supplied to the Salvadoran military, are procured through the FMS program and are subject to restrictions under the act.

Conditions governing transfer of MAP-funded items and services are specified in FMS sales agreements signed by the U.S. government and the recipient country. Paragraph B.9 of these agreements requires prior written U.S. consent for any transfer of title or possession to "anyone not an officer, employee or agent" of the recipient country. According to a Defense Security Assistance Agency (DSAA)<sup>2</sup> official, this type of transfer is commonly referred to as a "third-party" transfer.

To obtain consent, recipient countries must submit a written request to the State Department and receive written approval from the Under Secretary for Security Assistance, Science and Technology. The requirement for obtaining prior written consent for third-party transfers is among the conditions specified in FMS sales agreements between the U.S. and Salvadoran governments pertaining to MAP-funded fuel.

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## Transfers of Fuel

From August 1985 to October 1988, the FAS transferred at least 1,003,616 gallons of MAP-funded fuel to third parties and the U.S. government. Payments for this fuel totaled at least \$1,606,862, including

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<sup>2</sup>DSAA administers the MAP.

\$801,067 paid directly to the FAS and \$805,795 credited to the FMS trust fund account<sup>3</sup> for El Salvador.<sup>4</sup>

These transfers involved the sale of 24,310 gallons of MAP-funded AVGAS and 979,306 gallons of MAP-funded COMJET fuel for refueling the following aircraft:

- C-123 and C-7 aircraft belonging to the Enterprise, an organization set up to establish an operation to resupply Nicaraguan Democratic Resistance forces, commonly referred to as the Contras;
- L-100 and Boeing 707 aircraft operated by Southern Air Transport, a U.S. company involved in the Contra supply operation and other activities; and
- U.S. military aircraft and Southern Air L-100 and 707 aircraft on U.S. government contract flights.

In addition, the FAS transferred MAP-funded fuel for refueling of privately owned and foreign government aircraft in October 1986 and December 1988, respectively. However, we were unable to determine the type and quantity of fuel or whether any payments were made because the FAS Commander would not provide specific details.

Except for U.S. military and contract flights, these transfers involved third parties and occurred without U.S. consent. According to DSAA and State Department officials, U.S. military and contract aircraft are U.S. government entities, and because the U.S. government originally provided the fuel, no third party is involved. We believe that this position is reasonable.

## Transfers to the Contra Supply Operation

On October 5, 1986, a C-123 aircraft delivering supplies to Contra forces was shot down over Nicaragua. According to a congressional report,<sup>5</sup> this aircraft belonged to the Enterprise, an organization set up at the request of Lieutenant Colonel Oliver North, National Security Council staff. The report states that in the summer of 1985, North asked Major General Richard Secord, Retired, and his associates to procure arms and

<sup>3</sup>This account contains funds used to finance purchases of defense items and services for the Salvadoran military through the FMS program.

<sup>4</sup>Figures in this paragraph do not reflect total gallons and payments because data for transfers to the U.S. government during certain time periods in 1985, 1986, and 1987 were incomplete.

<sup>5</sup>Report of the Congressional Committees Investigating the Iran-Contra Affair, S. Rept. No. 100-216 and H. Rept. No. 100-433, Nov. 1987, page 59.

establish an air resupply program to support Contra forces in Nicaragua. Secord reportedly agreed to procure weapons and to acquire and operate a small fleet of planes to air-drop weapons, ammunition, and other supplies to the Contras.

The report also states that Secord and his associates set up Enterprise; purchased two C-123, two C-7, and three Maule aircraft; hired pilots and crew members; purchased weapons and ammunition in Europe; and chartered aircraft from Southern Air to deliver them to Central America and to assist in air-dropping supplies to the Contras. According to the report and aircrew members, the aircrews began arriving at Ilopango Air Base in February 1986 and air-dropped supplies to the Contras from March to October 1986. Further, Southern Air records and company officials indicated that Southern Air pilots on charter flights also landed at the base during 1986. In April and May, Southern Air pilots delivered munitions from Europe on two Boeing 707 aircraft, air-dropped supplies in Nicaragua on an L-100 aircraft, transported supplies from the United States on an L-100 aircraft, and transported Enterprise personnel on a JetStar aircraft.

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### Use of Ilopango Air Base and Role of U.S. Personnel

At the request of North, Mr. Felix Rodriguez, a private individual supporting the Contra supply operation, made arrangements for the Enterprise aircrews to operate at Ilopango. In a letter dated September 20, 1985, North asked Rodriguez to obtain permission from the FAS Commander to use service space for C-7 and Maule aircraft. The letter specifically stated that no use of U.S. equipment, personnel, or funds, including MAP, was required. Rodriguez told us that he mentioned North's name when discussing the request with the FAS Commander. He further stated that the Commander agreed to provide service space and continued to support the supply operation as it expanded to include other aircraft.

Rodriguez stated that after the supply operation began, the FAS Commander also provided base passes and maintenance support to the Enterprise aircrews and permitted them and Southern Air pilots on charter flights for Enterprise to refuel aircraft at the base. According to FAS and Southern Air records, the aircrews and Southern Air pilots purchased AVGAS and COMJET fuel from the FAS.

According to Rodriguez, he acted alone in arranging for the aircrews and others to operate at Ilopango. He stated that no one else, including officials assigned to the U.S. Military Group (MILGROUP) at the U.S. Embassy

in El Salvador, was involved. We interviewed the U.S. officials who served as the MILGROUP Commander and the Chief of the MILGROUP Air Force section during 1986. These officials stated they were aware that the aircrews and others operated at Ilopango but that they had no role in arranging for the use of base facilities or refueling privileges.

We attempted to verify information provided by Rodriguez and former MILGROUP officials with the FAS Commander. However, he would not comment on any aspect of the Contra supply operation, including whether or not he believed it was an official U.S. government activity. According to the Commander, Salvadoran national security interests prevented him from discussing the subject. We did not find any evidence that MILGROUP personnel were involved in arranging for the use of facilities at Ilopango or for refueling privileges.

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## Transfer of MAP-Funded Fuel

According to FAS and Southern Air records, the Enterprise aircrews and Southern Air pilots on charter flights for the Enterprise purchased fuel from the FAS to refuel aircraft on at least 63 occasions<sup>6</sup> during 1986. Of these refuelings, 32 occurred when the fuel tanks contained only MAP-funded fuel. From April to September 1986, the FAS sold 61,107 gallons of MAP-funded fuel, including 24,310 gallons of AVGAS, to the aircrews between August 22 and September 28, and 36,797 gallons of COMJET fuel to Southern Air pilots between April 10 and May 26. At a charge of \$2.00 per gallon for AVGAS and \$1.65 per gallon for COMJET fuel, the records show that these parties paid a total of \$109,335 for the fuel.

Table I.2 shows quantities and payments for MAP-funded fuel sold to the Contra supply operation for each type of aircraft refueled.

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<sup>6</sup>Figure does not include aircrews' refuelings in March, April, and May 1986 because data were not available.

Appendix I  
 Transfers of U.S. Military Assistance  
 Program-Funded Fuel in El Salvador

**Table I.2: MAP-Funded Fuel Sold to the Contra Supply Operation (Apr. to Sept. 1986)**

Purchaser	Type of fuel	Type of aircraft	Number of refuelings	Gallons sold	Amount paid
Enterprise aircrews	AVGAS	C-123	16	20,738	\$41,476
		C-7	8	3,572	7,144
<b>Total</b>			<b>24</b>	<b>24,310</b>	<b>\$48,620</b>
Southern Air pilots	COMJET	707	3	22,863	\$37,724
		L-100	4	12,480	20,592
		JetStar	1	1,454	2,399
<b>Total</b>			<b>8</b>	<b>36,797</b>	<b>\$60,715</b>
<b>Total</b>			<b>32</b>	<b>61,107</b>	<b>\$109,335</b>

According to Esso records, Esso delivered 89,000 gallons of MAP-funded AVGAS in August and September 1986 and 412,500 gallons of MAP-funded COMJET in April and May 1986. Therefore, the 24,310 gallons of AVGAS purchased by the aircrews in August and September 1986 represented 27 percent of the AVGAS delivered during these months. The 36,797 gallons of COMJET purchased by Southern Air pilots in April and May 1986 represented 9 percent of the COMJET delivered during these months.

**Payment Procedures**

The FAS received cash payments in U.S. dollars for MAP-funded fuel sold to Southern Air pilots and the Enterprise aircrews. Southern Air pilots paid for COMJET fuel at the time of refueling, and the aircrews paid for AVGAS through a "fuel fund."

According to Rodriguez, he and a FAS accountant established a cash fund to pay for aircrews' purchases of AVGAS. He told us that a Secord associate gave the accountant an initial deposit of \$15,000 in February 1986. Mr. Rodriguez stated that he himself made additional deposits, usually in increments of \$5,000 or \$10,000, of money provided by Secord associates. For each refueling, Rodriguez or his assistant signed a receipt showing the quantity and cost of AVGAS purchased. The FAS accountant then subtracted the dollar amount from the fund balance to reflect payment.

**Lack of U.S. Consent**

We found no evidence that the FAS Commander requested or obtained U.S. consent to transfer MAP-funded fuel to the Enterprise aircrews and Southern Air pilots. According to the former MILGROUP Commander and Air Force Section Chief, they did not receive a request for or approve the transfer of MAP-funded fuel. Although aware that refueling occurred

at Ilopango, these officials stated they did not know the FAS tanks contained only MAP-funded fuel and that the possibility of a transfer of MAP-funded fuel did not occur to them.

The MILGROUP Commander noted that Salvadoran Ministry of Defense officials told him in 1985 that they would continue to purchase fuel with Salvadoran national defense funds after MAP-funded fuel became available. The Commander told us that the FAS periodically sold fuel to refuel U.S. military aircraft landing at Ilopango, and he wanted to ensure that these sales did not involve MAP-funded fuel due to his concern about the propriety of FAS selling and receiving payments for fuel provided by the U.S. government. He stated that he did not know the Ministry had stopped purchasing fuel and that he therefore believed non-MAP funded fuel was available at Ilopango.

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### State Department Investigation of Alleged Transfers

During 1987, the State Department received requests from the Arms Control and Foreign Policy Caucus and Senator Harkin to provide information on the Contra supply operation. In July, the Caucus asked the State Department to identify time periods in 1985 and 1986 when tanks at Ilopango contained MAP-funded AVGAS and dates of refuelings. In November, Senator Harkin requested an investigation of allegations of illegal transfers of MAP-funded AVGAS and the role of U.S. personnel in approving the transfers.

After receiving Senator Harkin's request, State Department officials stated that they reviewed files and obtained information from the U.S. Embassy in El Salvador about the availability of AVGAS at Ilopango. Their investigation focused only on AVGAS because no other type of fuel was alleged to have been transferred. In late 1987, the Embassy staff reported that the only source of AVGAS available was the FAS tank containing MAP-funded fuel. However, they did not consult with current MILGROUP officials to confirm this information.

Because they believed the FAS tank was the only source of AVGAS available, State Department officials concluded that a transfer of MAP-funded fuel to the aircrews had possibly occurred. In January 1988, they drafted a letter to Senator Harkin stating that a "technical violation" of the third-party transfer restriction cited in the Arms Export Control Act may have occurred and sent a copy to DSAA for comment.

In January 1988, a DSAA official asked the MILGROUP logistics officer to confirm the number of AVGAS sources and obtain delivery rates of

MAP-funded AVGAS for 1986 and 1987. The MILGROUP official reported that AVGAS was available from more than one source: the tank on the FAS side of the base and tanks belonging to commercial fuel suppliers on the civilian side. He also reported that delivery rates for 1986 and 1987 were similar.

Because they had no evidence that parties involved in the Contra supply operation refueled aircraft with AVGAS from the FAS tank and delivery rates of MAP-funded AVGAS showed a consistent pattern of consumption, DSAA and MILGROUP officials concluded that no significant diversion to other users had occurred. State Department officials concurred and reported this information to Senator Harkin in February 1988 and to the Caucus in June 1988.

We found that no one with direct knowledge of the supply operation, including former MILGROUP officials and the FAS commander, was questioned about refueling activities at Ilopango during the State Department investigation. State Department, DSAA, and MILGROUP officials emphasized that they believed the Harkin request letter lacked specific details such as dates of refueling and quantities of AVGAS purchased. These officials stated that because they regarded the allegations to be general in nature and did not find any evidence of a transfer, they did not believe questioning individuals with direct knowledge of the supply operation about refueling activities was warranted.

If State Department, DSAA, and MILGROUP officials had questioned former MILGROUP officials, the FAS Commander, or aircrew members about refueling activities, they could have determined that the aircrews refueled from the FAS side of the base in August and September 1986. They could have then examined data on deliveries of MAP-funded AVGAS and confirmed that the aircrews refueled when the FAS AVGAS tank contained only MAP-funded fuel. Thus, the transfer of MAP-funded AVGAS could have been confirmed.

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## Other Third-Party Transfers

The FAS also transferred MAP-funded fuel to third parties other than those involved in the Contra supply operation. The FAS Commander told us that he occasionally allowed refueling at Ilopango of other third parties' aircraft, including privately owned aircraft involved in earthquake relief efforts in October 1986 and a Mexican government aircraft transporting the President of El Salvador in December 1988. However, the Commander would not discuss specific details. Therefore, we were

unable to determine the number of third-party refuelings, the quantity and type of fuel used, or whether any payments were made.

We found no evidence that the Salvadoran government requested or obtained U.S. consent for the FAS to transfer MAP-funded fuel to any third parties. Because the FAS Commander apparently transfers MAP-funded fuel at his own discretion, we believe greater control is required. DSAA officials agreed, and at their request, the State Department has tasked the Embassy to draft an agreement with the Salvadoran government establishing additional guidelines for the use of MAP-funded fuel.

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## Reporting Third-Party Transfers to Congress

The Arms Export Control Act requires the President to report any unauthorized third-party transfers, as well as unauthorized third-party transfers that may have constituted a "substantial" violation of sales agreements with the U.S. government, to the Congress. A violation may be substantial based on the quantities involved or the gravity of the consequences of the transfer. Section 3(c)(2) of the act requires that the President report to Congress when a substantial violation of a sales agreement may have occurred. Section 3(e) requires a report of any unauthorized third-party transfer.<sup>7</sup> Executive Order 11958 delegates these reporting responsibilities to the Secretary of State.

The act also provides for penalties against any recipient country that has committed a substantial violation involving an unauthorized third-party transfer. Such penalties consist of revoking eligibility for credits and guaranties used to finance purchases of defense items and services. Specifically, section 3(c)(3) indicates that a country shall be deemed ineligible for credits and guaranties in the case of a substantial violation if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution.

State Department and DSAA officials noted that the Salvadoran government does not receive credits or guaranties to finance purchases of defense items and services, including fuel. Rather, the United States provides MAP grant funds for this purpose. The Arms Export Control Act does not include the revocation of eligibility for MAP grant funds among the specific penalties that may be triggered by a substantial violation involving unauthorized third-party transfers. Therefore, the penalties

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<sup>7</sup>Although a report under section 3(c)(2) duplicates, in some respects, the requirement under section 3(e) to report any unauthorized third-party transfer, a report under section 3(c)(2) has the added effect of informing the Congress that a substantial violation may have occurred.

provided for in the act would not have been applicable to the transfers of MAP-funded fuel by the FAS if these transfers were determined to have constituted a substantial violation. If the Congress wishes to include the revocation of eligibility for MAP grant funds among these penalties, it will need to amend the act.

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## Violation of Sales Agreements

The transfer of MAP-funded fuel to the Contra supply operation and to privately owned aircraft involved in earthquake relief efforts violated the 1986 sales agreement. In addition, the transfer of MAP-funded fuel to a Mexican government aircraft transporting the President of El Salvador violated the 1988 sales agreement. However, the State Department has not reported these third-party transfers to the Congress as violations of the pertinent sales agreements under section 3(e) of the act.

Further, we believed that the transfer of fuel to the Contra supply operation may have constituted a substantial violation because it occurred when the U.S. government was legally prohibited by the International Development Security and Cooperation Act of 1985<sup>8</sup> from using military assistance funds, directly or indirectly, to support Contra military or paramilitary operations. Thus, even if the Salvadoran government had requested U.S. consent, granting such consent would have been inconsistent with the prohibition on providing indirect assistance to the Contras.

Furthermore, other legislation in effect during fiscal year 1986<sup>9</sup> prohibited the use of any funds to support Contra military or paramilitary operations except for certain limited activities such as providing intelligence support. These prohibitions would have prevented the United States from supplying fuel itself to the Contra supply operation. Lastly, we note that the unauthorized transfer resulted in the use of military assistance funds to support Contra military operations, indirectly circumventing the intent of Congress.

Thus, we recommended in a draft of this report that the Secretary of State determine whether or not the transfer may have constituted a substantial violation of the 1986 sales agreement. In response to our draft

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<sup>8</sup>Public Law 99-83, August 8, 1985. This act authorized international development and security assistance funds, including MAP grant funds, for fiscal years 1986 and 1987.

<sup>9</sup>The Intelligence Authorization Act for Fiscal Year 1986 (P.L. 169, Dec. 4, 1985) and the Department of Defense Appropriations Act of 1986 (P.L. 190, Dec. 19, 1985) also prohibited the Central Intelligence Agency, Department of Defense, or any other agency from using available funds to support Contra military or paramilitary operations except for certain limited activities such as providing intelligence support.

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report, State reported it had concluded that a substantial violation did not occur. Since this in effect represents the Secretary's determination and responds to our recommendation, we deleted the recommendation from our final report.

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## Transfers to the U.S. Government

The FAS has transferred MAP-funded fuel to the U.S. government for refueling the following U.S. military aircraft and Southern Air aircraft on U.S. government contract flights:

- U.S. Air Force and Army fixed-wing aircraft and helicopters delivering MAP items and providing transport service and
- Southern Air L-100 and 707 aircraft on contract flights for the Military Airlift Command (MAC) to deliver cargo and for the State Department's Nicaraguan Humanitarian Assistance Office (NHAO) to deliver humanitarian aid to the Contras.

These transfers involved the sale of at least 942,509 gallons of MAP-funded COMJET fuel to U.S. military pilots from August 1985 to September 1988 and to Southern Air pilots from March 1986 to October 1988. We were unable to determine the exact total because data on sales during certain time periods in 1985, 1986, and 1987 were not complete.

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## Direct Payments to the FAS

The FAS received \$691,732 in direct payments by U.S. Treasury check or cash for 433,359 of the 942,509 gallons of MAP-funded fuel sold to refuel U.S. military aircraft from August 1985 to April 1987 and Southern Air aircraft on MAC and NHAO contract flights from March 1986 to October 1988. The remaining 509,150 gallons were used to refuel U.S. military aircraft from April 1987 to September 1988. Payments for this fuel totaled \$805,795 and were credited to an account for El Salvador in the FMS trust fund, as discussed below.

Table I.3 shows the quantities sold, direct payments to the FAS, and payments credited to the FMS trust fund for MAP-funded fuel sold to refuel U.S. military aircraft and Southern Air aircraft on U.S. government contract flights.

Appendix I  
 Transfers of U.S. Military Assistance  
 Program-Funded Fuel in El Salvador

**Table I.3.: MAP-Funded Fuel Sold to Refuel U.S. Military Aircraft and Southern Air Aircraft on U.S. Government Contract Flights (Aug. 1985 to Oct.1988)**

Type of aircraft	Direct payments		Credited payments		Total payments	
	Gallons	Amount	Gallons	Amount	Gallons	Amount
U.S. Military	263,253	\$390,213	509,150	\$805,795	772,403	\$1,196,008
Southern Air	170,106	301,519	0	0	170,106	301,519
<b>Total</b>	<b>433,359</b>	<b>\$691,732</b>	<b>509,150</b>	<b>\$805,795</b>	<b>942,509</b>	<b>\$1,497,527</b>

According to Embassy records, U.S. military aircraft have refueled at Ilopango since at least October 1984. Prior to delivery of MAP-funded COMJET fuel in August 1985, the FAS sold COMJET fuel purchased by the Salvadoran Ministry of Defense with Salvadoran national defense funds. For each refueling, U.S. military pilots signed a receipt for the quantity and cost of COMJET fuel purchased. FAS personnel submitted the receipt to the U.S. Embassy. The Embassy billed the U.S. military unit whose aircraft was refueled and issued a U.S. Treasury check written in colones, the local currency, to the FAS. This payment procedure continued after MAP-funded fuel became available in August 1985.

In 1987, DSAA and MILGROUP officials became concerned about the propriety of direct payments to the FAS and the lack of U.S. government control over use of the monies. As a result, they implemented a credit system. Beginning in April 1987, the Embassy stopped issuing checks to the FAS and began forwarding reimbursements from military units to the DSAA Security Assistance Accounting Center in Denver, Colorado. The Center credits these reimbursements to a holding account for El Salvador in the FMS trust fund. This account finances purchases of defense items and services for the Salvadoran military.

A different payment procedure existed for fuel sold to Southern Air pilots on U.S. government contract flights. According to Southern Air officials, pilots paid cash in U.S. dollars to FAS personnel at the time of refueling. DSAA officials stated they did not know that Southern Air pilots paid the FAS directly and therefore did not consider these payments when implementing the credit system. At the request of DSAA, the State Department has asked the Embassy to ensure that the agreement establishing additional guidelines for the use of MAP-funded fuel includes a provision requiring all payments to be credited to the FMS trust fund.

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## Use of Payments

As table I.3 indicates, the FAS received \$691,732 in direct payments from the sale of MAP-funded fuel over a period of about 3 years. DSAA and current MILGROUP officials stated that they did not know how the FAS Commander spent proceeds from the sale of MAP-funded fuel. However, the U.S. official serving as the MILGROUP Commander during 1987 told us that a review of the FAS expenditure records in April 1987 showed that payments received as of that time were used to pay for construction of facilities at Ilopango and other FAS operational requirements. He did not verify the accuracy of this information.

According to DSAA officials, recipient countries are entitled to keep the proceeds from sales of defense items procured through the FMS program, including those funded with MAP grant financing. According to paragraph B.6 of FMS sales agreements between the U.S. and recipient governments, the recipient country shall accept title to items and services covered under the agreement. Because the United States does not retain reversionary rights to the title, DSAA officials stated that countries are not required to return items when no longer needed, or the proceeds if they are sold. They stated that the MAP-funded fuel supplied to El Salvador and proceeds from its sale therefore belonged to the Salvadoran government.

Although it appears that recipient countries are legally entitled to keep the proceeds from sales of defense items, we are concerned that countries can generate cash from the FMS program and are not subject to any controls over its use. The Arms Export Control Act authorizes the U.S. government to provide military assistance to recipient countries through selling and leasing defense items; however, the act does not authorize cash transfers as a means of assistance.

Recipient countries should generally use proceeds from the sale of MAP-funded defense items procured through the FMS program only to finance additional defense-related purchases. We support the action taken by DSAA to credit proceeds from sales of MAP-funded fuel to the U.S. government to the FMS trust fund account for El Salvador and believe that the return of proceeds should be a standard procedure in most cases.

# Objectives, Scope, and Methodology

Senator Harkin requested that we review the use of MAP-funded fuel provided to El Salvador. Our objectives were to (1) determine whether MAP-funded fuel was improperly transferred to the Contra supply operation and, if so, whether or not any U.S. personnel approved or were aware of the transfer and (2) review efforts by the State Department to investigate alleged transfers. We also developed information on transfers of MAP-funded fuel to parties other than those involved in the Contra supply operation.

We conducted our review at the State Department, DSAA, U.S. Army Security Affairs Command, and Defense Fuel Supply Center in Washington, D.C., and at the U.S. Embassy, FAS headquarters, and offices of Esso and Texaco Caribbean, Inc., in San Salvador, El Salvador. Additionally, we interviewed officials of Southern Air and its legal counsel, U.S. officials formerly assigned to the MILGROUP in El Salvador, and individuals involved in the Contra supply operation.

To determine whether any fuel was transferred, we interviewed knowledgeable persons and reviewed data on deliveries of MAP-funded fuel and refuelings of Contra supply aircraft. We contacted Enterprise aircrew members, the civilian manager at Ilopango, and officials from Southern Air, Esso, and Texaco to confirm whether Contra supply aircraft refueled with fuel from FAS tanks and the dates when these tanks contained only MAP-funded fuel. We also analyzed data on fuel deliveries and refuelings to determine whether refuelings occurred when FAS tanks contained only MAP-funded fuel.

To determine if any U.S. personnel approved or were aware of the transfers, we interviewed State Department, DSAA, Embassy, and former MILGROUP officials, the FAS Commander, and Mr. Felix Rodriguez, a private individual supporting the Contra supply operation. However, the FAS Commander would not discuss the supply operation for reasons of Salvadoran national security interests.

To review State Department efforts to investigate alleged transfers, we interviewed State Department, DSAA, Embassy, and MILGROUP officials and analyzed information developed during the investigation.

To develop information on other transfers, we interviewed DSAA, MILGROUP, and Southern Air officials and reviewed data on payments for MAP-funded fuel sold by the FAS to refuel U.S. military aircraft and Southern Air aircraft on U.S. government contract flights. We were unable to determine the total gallons sold and payment amounts because

the Embassy's data were not complete. We also met with the FAS Commander to discuss use of these payments and transfers of MAP-funded fuel to third parties other than those involved in the Contra supply operation. The Commander would not provide specific details on these transfers; therefore, we were unable to determine the number of third-party refuelings, quantity and type of fuel, or whether any payments were made.

We performed our work between March 1988 and February 1989 in accordance with generally accepted auditing standards.

# Comments From the Department of State



United States Department of State

Comptroller

Washington, D.C. 20520

June 19, 1989

Dear Mr. Conahan:

I am replying to your letter of May 15, 1989 to the Secretary which forwarded copies of the draft report entitled "El Salvador: Transfer of Military Assistance Fuels" (GAO Code 463768) for review and comment.

The enclosed comments were coordinated within the Department and prepared by the Office of the Legal Adviser.

We appreciate the opportunity to review and comment on the draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger B. Feldman".

Roger B. Feldman

Enclosure:  
As stated.

Mr. Frank C. Conahan  
Assistant Comptroller General,  
National Security and  
International Affairs Division,  
U.S. General Accounting Office,  
Washington, D.C. 20548.

Appendix III  
Comments From the Department of State

GAO DRAFT REPORT COMMENTS: EL SALVADOR: TRANSFERS OF MILITARY ASSISTANCE FUELS (GAO CODE 463768)

The following represents the comments of the Department of State on the above-referenced GAO draft report.

Now on pp. 1, 5-6, 21.

The Department of State concurs in the GAO's conclusion that the transfers of MAP-funded/FMS-procured aviation gasoline and commercial jet fuel to Nicaraguan Resistance resupply flights without USG consent violated the retransfer provisions of the contractual agreement ("the LOA") under which the gasoline and fuel were provided by the United States to El Salvador. The Department is in the process of submitting a report to Congress under section 3(e) of the Arms Export Control Act (AECA) regarding these unauthorized transfers, as recommended in the report.

Now on pp. 6-7, 21-22.

In light of our decision to report under section 3(e), the question of whether the reporting requirement of section 3(c) of the AECA also applies is moot. However, in light of your request that we examine whether the transfers may have constituted a "substantial violation" of the LOA within the meaning of section 3(c) of the AECA, we have reviewed that question as well. Based upon our review of the facts, we have found no basis for concluding that such a "substantial violation" occurred.

Section 3(c)(1) of the AECA provides that whether a violation is substantial is to be determined by reference to the quantity of articles involved or the gravity of the consequences. No other criteria are provided in the statute. We found that neither the quantity of the fuel transferred nor the consequences of the transfers suggest that a substantial violation took place.

With respect to quantity, according to the data collected, the unauthorized transfers to the Resistance supply flights amounted to 61,107 gallons. This total represents a fraction of the nearly nine million gallons in MAP-funded fuels provided to the El Salvadoran Air Force as of late 1988. The value of the diverted fuel -- approximately \$100,000 -- is also relatively insubstantial compared to the \$21 million in MAP-funded/FMS-procured fuels delivered to the Salvadoran armed forces in the same period, and an overall \$435 million in MAP funding provided to El Salvador since fiscal year 1985.

In terms of the gravity of the consequences, the effects of the transfers do not appear to have been significant. For example, the fuel sold to aircraft flying resupply operations

Appendix III  
Comments From the Department of State

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for the Nicaraguan Resistance did not sustain the resupply effort over any extended period of time. In addition, there is no reason to believe that the availability of the fuel from the El Salvadoran Air Force (FAES) was essential to the continuation of the supply flights. The fuel, which was sold roughly at or above market rates, could have been obtained readily from other commercial sources.

With respect to the gravity of this violation, we believe that it is also relevant that the facts do not suggest any deliberate attempt to circumvent U.S. retransfer restrictions. Rather, based upon the information collected, the transfer by the FAES of fuel without USG consent appears to have been due to confusion by Salvadoran airfield personnel about fuel issues to particular aircraft that were authorized and issues that required prior USG consent.

On the question of substantial violation, the draft report states that "the transfer of fuel to the Contra supply operation may have constituted a substantial violation ... because it occurred at a time when the U.S. government was prohibited by law from supporting Contra military operations through the use of military assistance funds and thus, U.S. consent could not have been legally granted." (Draft Report at 8-9). We do not find this a persuasive argument for determining that Salvadoran actions constituted a substantial violation.

First, the prohibition applied to U.S. (not foreign government) personnel. The report notes that no evidence was found that any USG employee was aware of or approved the unauthorized transfers. Second, as previously mentioned, the transfers of fuel without U.S. consent appear to have been unintentional -- not a knowing circumvention of a legal proscription that precluded the U.S. from consenting to the transfers. Third, the fuel provided by the FAES to the Resistance resupply flights was not provided without cost; rather, it was sold roughly at or above market rates and could have been obtained from commercial sources. Thus, the sale did not constitute "assistance" as that term is commonly used and understood. In short, the fact that the transfers occurred at a time when a prohibition existed, which was neither violated nor deliberately circumvented, is not sufficient by itself to find that a substantial violation occurred. We note that there are previous cases where a determination of a substantial violation was not made, although an unauthorized transfer that could not have been approved under U.S. law was involved.

Now on pp. 6-7, 21-22.

**Appendix III  
Comments From the Department of State**

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Now on pp. 4, 20.

In regard to reporting requirements, the draft report states that Executive Order 11958 delegates all reporting responsibilities under the Arms Export Control Act (AECA) to the Secretary of State. This statement is an overgeneralization.

With respect to section 3 of the AECA, the Secretary of State is delegated all functions conferred upon the President under this section, with the exception of functions under subsections (a)(1), (b), (c)(3), (c)(4), and (f). (See section 1(a) of Executive Order 11958.) This delegation includes the responsibility to submit reports (1) under subsections (c)(1) and (c)(2) that a substantial violation may have occurred and (2) under subsection (e) that an unauthorized transfer has been made. (State Department Delegation of Authority No. 145 further delegates this responsibility to the Under Secretary for Security Assistance and Technology, although it provides that the Secretary of State or the Deputy Secretary of State may at any time exercise any functions delegated pursuant to this delegation of authority.) However, the ineligibility determination and the reporting of that determination under subsection (c)(3) are authorities reserved to the President. In addition, the certification under subsection (c)(3)(B) that an ineligibility determination terminating cash sales and deliveries to a foreign country for an unauthorized use of defense articles and services would adversely affect U.S. security is reserved to the President.

Now on pp. 4, 20-21.

The draft report notes that the AECA does not include the revocation of eligibility for MAP grant funds among the specific penalties that may be triggered by a substantial violation, and that because the Salvadoran government receives MAP instead of FMS credits or guarantees, the penalties under the AECA are "not applicable (sic) to the transfers of MAP-funded fuel by the Salvadoran Air Force." (Draft Report at 6-7, 10). The President, however, does have discretionary authority to impose additional sanctions, if in his best judgment it is in the national interest in the circumstances to do so.

More specifically, the President currently has the authority under U.S. law to terminate or suspend foreign assistance to a particular recipient. In addition, he may elect to deny or suspend export licenses for both military and nonmilitary equipment or invoke diplomatic sanctions. Thus, an amendment of the AECA to include revocation of eligibility for MAP grant funds among the specific penalties that may be triggered by a determination of a substantial violation under the AECA, as mentioned in the report, is not necessary.

Appendix III  
Comments From the Department of State

Now on pp. 6-8.

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Finally, the report contains a recommendation that DSAA amend the standard FMS sales agreement to include a provision requiring that proceeds from the sale of MAP-funded defense items procured through the FMS program be returned to the FMS trust fund account of the recipient country. We will defer to the Department of Defense on this issue.

*Michael J. Matheson*

Michael J. Matheson,  
Deputy Legal Adviser

# Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



INTERNATIONAL  
SECURITY AFFAIRS

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2400

30 JUN 1989

In reply refer to:  
I-89/58220

Mr. Frank C. Conahan  
Assistant Comptroller General  
United States General Accounting Office  
Washington, D. C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DOD) response to the General Accounting Office (GAO) draft report: "EL SALVADOR: Transfer of Military Assistance Fuels," dated May 15, 1989 (GAO Code 463768/OSD Case 7899-A). In general, the Department found the report to be straightforward and well balanced.

The major DOD disagreement with the report lies with the GAO conclusion that the third party transfers of fuel may have represented a substantial violation of the Arms Export Control Act. The DOD also disagrees with the necessity to change the standard Foreign Military Sales agreement to prevent conversion of military assistance to unrestricted cash for the recipient country. It is the DOD position that there are more appropriate ways to address this problem.

As we pointed out in the Senate hearings on this report, the cooperation shown by all agencies involved was admirable and is to be commended. All aspects of the case were thoroughly investigated and the Department appreciates the evenhandedness by the GAO in this matter.

The detailed DOD comments are provided in the enclosure.

Sincerely,

A handwritten signature in cursive script that reads "Henry S. Rowen".

Henry S. Rowen  
Assistant Secretary of Defense  
International Security Affairs

Enclosure  
a/s

GAO DRAFT REPORT - MAY 15, 1989  
(GAO CODE 463768) OSD CASE 7899-A

"EL SALVADOR: TRANSFERS OF MILITARY ASSISTANCE FUELS"

DEPARTMENT OF DEFENSE COMMENTS

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FINDINGS

See comment 1.

**Finding A: Transfers of Fuel.** The GAO found that, from August 1985 to October 1988, the Salvadoran Air Force transferred at least 1,003,616 gallons of Military Assistance Program-funded fuel to the third parties and the U.S. Government, with payments totaling \$1,606,862. The GAO reported that these transfers involved the sale of 24,310 gallons of aviation gas and 979,306 gallons of commercial jet fuel for refueling the following aircraft:

- C-123 and C-7 aircraft belonging to Enterprise, an organization set up to establish an operation to resupply Nicaraguan Democratic Resistance Forces, commonly referred to as the Contras;
- L-100 and Boeing 707 aircraft operated by Southern Air Transport, a U.S. company involved in the Contra supply operation and other activities; and
- U.S. military aircraft and Southern Air L-100 aircraft on U.S. Government contract flights.

The GAO reported that, in addition, in October 1986 and December 1988, the Salvadoran air force also transferred an unknown quantity and type of fuel funded by the Military Assistance Program to privately owned and foreign government aircraft. the GAO found that, except for U.S. military and contract flights, these transfers involved third parties and occurred without U.S. consent. (pp. 15-16/GAO Draft Report)

Now on pp. 1, 5, 13-14.

**DOD Response:** Concur.

**Finding B: Use of Ilopango Air Base and Role of U.S. Personnel.** The GAO reported that, at the request of LtCol Oliver North (then with the national Security Council), Mr. Felix Rodriguez, a private individual supporting the Contra supply operation, made arrangements for the Enterprise air crews to operate at Ilopango. The GAO noted that, in a letter dated September 20, 1985, LtCol North asked Rodriguez to obtain

permission from the Salvadoran Air Force Commander to use service space for resupplying the Contras. According to the GAO, the letter specifically stated that no use of equipment, personnel or funds, including Military Assistance program funds, was required.

See comment 1.

The GAO reported Mr. Rodriguez stated that, after the supply operation began, the Commander also provided base passes and maintenance support to the Enterprise air crews and permitted them and Southern Air pilots on shorter flights for Enterprise, to refuel aircraft at the base. The GAO noted that, according to Salvadoran Air Force and Southern Air records, the air crews and Southern Air pilots purchased aviation gas and commercial jet fuel from the Salvadoran Air Force, including 60,107 gallons of Military Assistance Program-funded fuel.

The GAO reported that, according to Mr. Rodriguez, he acted alone in arranging for the air crews and others to operate at Ilopango and no one else, including officials assigned to the U.S. Military Group at the Embassy in San Salvador, was involved. The GAO further reported that the U.S. officials, who, during 1986, served as (1) the U.S. Military Group Commander and (2) the chief of the U.S. Military Group Air Force Section, stated they were aware that the air crews and others operated at Ilopango, but maintained they had no role in arranging for the use of base facilities or refueling privileges.

Now on pp. 2-3, 16.

The GAO did not find any evidence that U.S. Military Group personnel were involved in arranging for the use of facilities at Ilopango, or for refueling privileges. (pp. 17-18/GAO Draft Report)

**DOD Response:** Concur.

**Finding C: Lack of U.S. Consent.** The GAO found no evidence that the Salvadoran Air Force Commander requested or obtained U.S. consent to transfer fuel funded by the Military Assistance Program to the Enterprise air crews and Southern Air Pilots. The GAO reported that the former U.S. Military Group Commander and the former Air Force Section Chief indicated that they did not receive a request for, or approve of the transfer of Military Assistance Program-funded fuel. The GAO further reported that, although aware that refueling occurred at Ilopango, these officials stated (1) they did not know the tanks contained only Military Assistance Program-funded fuel and (2) the possibility of a transfer of Military Assistance Program-funded fuel did not occur to them.

The GAO observed that, according to the U.S. Military Group Commander, in 1985, Salvadoran Air Force and Ministry of Defense officials told him they would continue to purchase fuel with

Now on p. 18.

Salvadoran national defense funds, even after fuel funded by the Military had stopped purchasing fuel and, therefore, he believed non-Military Assistance Program funded fuel was available at Ilopango. (pp. 20-21/GAO Draft Report)

DOD Response: Concur.

Finding D: State Department Investigation of Alleged Transfers.

The GAO reported that, in 1987, Senator Harkin and the Arms Control and Foreign Policy Caucus requested an investigation of allegations of illegal transfers of aviation gas funded by the Military Assistance Program and the role of U.S. personnel in approving the transfers.

The GAO noted that the State Department investigation focused only on aviation gas because no other type of fuel was alleged to have been transferred. The GAO reported that, in January 1988, the State Department drafted a letter to Senator Harkin stating that a "technical violation" of the third-party transfer restriction cited in the Arms Export control Act may have occurred and sent a copy to the Defense Security Assistance Agency for comment.

The GAO found that (1) because they had no evidence that parties involved in the Contra supply operation refueled aircraft with aviation gas from the Salvadoran Air Force tank and (2) because delivery rates of aviation gas funded by the Military Assistance Program showed a consistent pattern of consumption, defense Security Assistance Agency and U.S. Military Group officials concluded that no significant diversion to other users had occurred. The GAO noted that the State Department officials concurred and reported this information to Senator Harkin in February 1988, and to the Caucus in June 1988.

The GAO observed, however, that no one with direct knowledge of the supply operation was questioned about refueling activities at Ilopango during the State Department investigation. In response to this observation, the GAO noted State Department, Defense Security Assistance Agency and U.S. Military Group officials emphasized that the Harkin request letter lacked specific details, such as dates of refueling and quantities of aviation gas purchased. According to these officials, since they found no evidence of a transfer, and given the general nature of the allegations, they did not consider further questioning warranted.

The GAO concluded that, if State Department, Defense Security Assistance Agency, and U.S. Military Assistance officials had expanded their questioning, they could have confirmed the transfer of fuel funded by the Military Assistance Program, because the air crews, former U.S. Military Group officials, and the Salvadoran Air Force Commander knew that in August and

September 1986, the air crews refueled from the Salvadoran Air Force side of the base. The GAO maintained that, as a result, officials investigating the matter could have determined refuelings occurred when the Salvadoran Air Force aviation gas tank contained only Military Assistance Program-funded fuel. (pp. 21-23/GAO Draft Report)

Now on pp. 3-4, 18-19.

See comment 2.

**DOD Response:** Partially Concur. The Department of Defense concurs that, had the information that was made available from the Iran-Contra hearings documents and used by the GAO in this investigation, also been made available to the Departments of State and Defense at the time of the initial investigation, the existence and scope of third party transfers would have been confirmed at that time. Due to the then ongoing Contra hearings, these documents were not available to the Department of State or the Department of Defense for examination. The Contra documents provided the identification of Contra network members and specific information on Contra operations, which was not available to the Departments of State and Defense at the time the initial investigation was conducted.

**Finding E: Other Third-Party Transfers.** The GAO found that the Salvadoran Air Force also transferred Military Assistance Program-funded fuel to third parties, other than those involved in the Contra supply operation. The GAO noted that these transfers involved refueling of Southern Air aircraft and privately owned and foreign government aircraft. The GAO also found that (1) in October 1986, private pilots involved in earthquake relief efforts refueled privately owned aircraft at the base and (2) in December 1988, foreign government pilots transporting the President of El Salvador, refueled an official government aircraft belonging to the Mexican government.

The GAO found no evidence that the Salvadoran Government requested or obtained U.S. consent for the Salvadoran Air Force to transfer Military Assistance Program-funded fuel to any third parties. The GAO concluded that, because the Salvadoran Air Force Commander apparently transfers Military Assistance Program-funded fuel at his own discretion, greater control is required. The GAO noted that Defense Security Assistance Agency officials agreed and, at their request, the State Department has tasked the Embassy to draft an agreement with the Salvadoran government establishing additional guidelines for the use of Military Assistance Program-funded fuel and granting U.S. consent only for certain third-party transfers. (pp. 23-25/GAO Draft Report)

Now on p. 20.

**DOD Response:** Concur. Since release of this draft report, Southern Air Transport has identified the nature of these transfers. Most of the fuel was identified as used for U.S. Government contract operations. The remaining fuel was confirmed as used in support of Contra resupply operations.

See comment 1.

This information has resulted in adjustments to tables I.2 and I.4 on pages 19 and 29 of the draft report. It is recommended that Table I.3 on page 24 and related discussion of unaccountable Southern Air Transport transfers be deleted from the GAO draft report. Per these adjustments, appropriate changes to dollar and gallon values have been made throughout the text of the draft report and separately provided to the GAO.

**Finding F: Reporting Third-Party Transfers to Congress.** The GAO observed that the Arms Export Control Act requires the President to report unauthorized third-party transfers, as well as transfers that may have constituted a "substantial" violation of sales agreements with the U.S. Government, to the Congress. The GAO found that the transfer of the Military Assistance Program-funded fuel to (1) the Enterprise air crews and Southern Air pilots involved in the Contra supply operation, (2) Southern Air pilots on non-U.S. Government flights, and (3) private pilots involved in earthquake relief efforts, violated the 1986 sales agreement. The GAO also found that the transfer of Military Assistance Program-funded fuel to foreign government pilots transporting the President of El Salvador violated the 1988 sales agreement. The GAO concluded that the State Department should report these third party transfers to the Congress as violations of the pertinent sales agreements under section 3 (e) of the Act.

The GAO also expressed belief that the transfer of fuel to the Contra supply operation may have constituted a substantial violation of the 1986 sales agreement because it occurred when the U.S. Government was prohibited by the Boland Amendment and other legislation from using military assistance program funds to support military or paramilitary operations of the Contras. The GAO concluded that the U.S. Government could not have legally approved the transfer, even if the Salvadoran government had requested consent, because the Arms Export Control Act states that the President shall not give consent unless the United States itself would make the transfer. The GAO observed that the Boland Amendment would have prevented the United States from transferring Military Assistance Program-funded fuel to the Contra supply operation.

In summary, the GAO concluded that the Secretary of State should determine whether the transfer may have constituted a substantial violation of the 1986 sales agreement and, if so, should report the transfer under section 3 (c) (2) of the Act. (pp. 25-27/GAO Draft Report)

Now on pp. 6-7, 21-22.

**DOD Response:** Partially Concur. The Department of Defense agrees that a violation did occur. However, it is the DOD position that the transfer of 61,107 gallons of fuel does not constitute a substantial violation of the sales agreement. In both relative and absolute terms, the transfer was not

See comments 1 and 3.

substantial. Relative to the overall El Salvador assistance program, the transfer of fuel valued at approximately \$100,000 during a period (FY 1986 - FY 1987) in which El Salvador received over \$200 million, is not a significant transfer. In absolute terms, the GAO conclusions do not reflect the unique nature of fuel and the general reciprocity under which most military and civilian airfields routinely refuel (with reimbursement) any aircraft that lands at their facility. The GAO discussions with the Defense Security Assistance Agency also noted that the Salvadoran Air Force charged the Contras more for the fuel than they paid in MAP funds and this amount was at or above the local rate for the purchase of fuel. Accordingly, the Salvadoran Air Force did not subsidize Contra operations by providing fuel at advantageous rates. Providing fuel at competitive rates, which the Contras could have arranged themselves from the local refinery, constituted a convenience, but in no way a special benefit to Contra operations such that it constituted a "substantial violation" of the sales agreement.

**Finding G: Transfers to U.S. Government.** The GAO reported that the Salvadoran Air Force has transferred Military Assistance Program-funded fuel to the U.S. Government for refueling the following U.S. Military aircraft and Southern Aircraft on U.S. Government contract flights:

- U.S. Air Force and Army fixed-wing aircraft and helicopters delivering Military Assistance Program items and providing transport service; and
- Southern Air L-100 aircraft on contract flights for the Military Airlift Command to deliver cargo and for the State Department Nicaraguan Humanitarian Assistance Office to deliver humanitarian aid to the Contras.

The GAO reported that these transfers involved the sale of at least 936,334 gallons of Military Assistance Program-funded commercial jet fuel to U.S. military pilots, from August 1985 to September 1988, and to Southern Air Pilots, from March 1986 to October 1988. The GAO further reported that the Salvadoran Air Force received \$681,543 in direct payment by U.S. Treasury check or cash for 427,184 of the 936,334 gallons of Military Assistance Program-funded fuel sold to refuel U.S. military aircraft, while payments for the remaining fuel totaling \$805,795 were credited to an account for El Salvador in the Foreign Military Sales trust fund.

The GAO reported that, in 1987, Defense Security Assistance Agency and the Military Group officials became concerned about the propriety of direct payments to the Salvadoran Air Force and the lack of U.S. Government control over use of the monies and, as a result, implemented a credit system. The GAO noted that, beginning in April 1987, the Embassy stopped issuing checks and

See comment 1.

began forwarding reimbursement from military units to the Defense Security Assistance Agency Security Assistance Accounting Center in Denver, Colorado, crediting the reimbursement to a holding account for El Salvador in the foreign military sales trust fund, which finances purchases of defense items and services for the Salvadoran military.

The GAO reported that the Salvadoran Air Force used a different payment procedure for fuel sold to Southern Air Pilots on U.S. Government contract flights, of which the Defense Security Assistance Agency was not aware. The GAO noted that, at the request of Defense Security Assistance Agency, the State Department has asked the Embassy to ensure that the agreement, establishing additional guidelines for the use of Military Assistance Program-funded fuel, includes a provision requiring all payments to be credited to the foreign military sales trust fund.

See comment 1.

The GAO reported that the Defense Security Assistance Agency and current U.S. Military Group officials stated that they do not know how the Salvadoran Air Force Commander has spent the \$681,543 proceeds from the sale of fuel by the Military Assistance Program. The GAO further reported, however, the U.S. official serving as U.S. Military Group Commander during 1987, indicated that payments received, as of April 1987, were used to pay for construction of facilities at Ilopango and other Salvadoran Air Force operational requirements.

The GAO noted that, according to Defense Security Assistance Agency officials, recipient countries are entitled to keep the proceeds from sales of defense items procured through the Foreign Military Sales program, including those funded with Military Assistance Program grant financing. The GAO also reported that, because the United States does not retain reversionary rights to the title, Defense Security Assistance Agency officials stated that countries are not required to return items when no longer needed, or the proceeds if they are sold.

The GAO concluded that it appears that recipient countries are legally entitled to keep the proceeds from sales of defense items. The GAO expressed concern, however, that countries can generate cash from the foreign military sales program and not be subject to any controls over its use. The GAO noted that, while the Arms Export Control Act authorizes the U.S. Government to provide military assistance to recipient countries through selling and leasing defense items, it does not include any provision authorizing cash transfers as a means of assistance.

The GAO concluded that recipient countries should use proceeds from the sale of Military Assistance Program-funded defense items procured through the foreign military sales program only

to finance additional defense-related purchases. The GAO expressed support for the action taken by the Defense Security Assistance Agency to credit proceeds from sales of Military Assistance Program-funded fuel to the U.S. Government to the foreign military sales trust fund account for El Salvador, and believes this practice should be extended to all recipient countries for any future sale, including those involving third parties. The GAO further concluded that the Defense Security Assistance Program should amend the standard foreign military sales agreement to include a provision requiring sale proceeds to be returned to the foreign military sales trust fund account of the recipient country. (pp. 27-32/GAO Draft Report)

Now on pp. 6-8.

**DOD Response:** Partially Concur. The Department of Defense shares the concern expressed by GAO that U.S. grant assistance (Foreign Military Sales nonrepayable credit or Military Assistance Program) not be used as a vehicle to generate cash funds for a recipient. However, the circumstances in El Salvador are unique as it is one of the few situations in which significant quantities of fuel have been purchased with U.S. assistance funds. The GAO discussion does not reflect the unique nature of fuel and the general reciprocity under which most military and civilian airfields routinely refuel (with reimbursement) any aircraft which lands at their facility. Few commodities which the U.S. provides to Grant Aid recipients are likely to be provided to other parties as a part of "normal operations." As previously discussed by the GAO, action has been taken to terminate Salvadoran cash receipts from sales of Military Assistance Program financed fuel in El Salvador. Accordingly, this situation may not constitute a basis for a major revision of the Foreign Military Sales.

As conversion of assistance funds to unrestricted cash is a valid concern, it warrants review of procedures which might be applied in other circumstances to control such actions. The Defense Security Assistance Agency review of applicable regulations indicates that, rather than amending Foreign Military Sales cases, a more appropriate method to establish such a policy change would be in Section 11001.A.5 of DOD Manual 5105.38M, the Security Assistance Management Manual. This section describes the restrictions on the use of Military Assistance Program funds and U.S. Government reversionary rights relative to the sale of Foreign Military Sales procured items. Amendment to the current policy could provide for return of the proceeds of the sale items financed with MAP Merger or nonrepayable Foreign Military Sales Credit funds to the purchaser's Trust Fund. Such a policy could be applicable to cases in which a purchaser sells defense articles -- whether to third parties with U.S. Government consent or to the U.S. Government or its contractors -- that were wholly financed with Military Assistance Program Merger or nonrepayable Foreign Military Sales Financing within a three-year period after the

articles enter the purchaser's inventory. The three-year period is suggested in order to eliminate the concern the Defense Security Assistance Agency shares with the GAO draft report that a purchaser could theoretically subvert the purpose of the financing appropriation by quickly turning grant funds into unrestricted cash through a scheme of purchasing defense articles at cost from the U.S. Government and reselling at fair market value. On the other hand, the purchaser should be able to retain control of resale proceeds where it is clear that the defense articles were purchased in good faith and had substantially served the purpose for which they were acquired from the U.S. Government. The Defense Security Assistance Agency has such a change under consideration. The change will be coordinated with the Department of State, and the State Department has indicated that it will consider requests in the future for consents to transfers on conditions of deposit of the proceeds of sale to the country's Foreign Military Sales trust fund accordingly.

**RECOMMENDATIONS TO SECRETARY OF STATE**

Now on p. 5.

**Recommendation 1:** The GAO recommended that the Secretary of State report the Military Assistance Program-funded fuel transfers as a violation of the 1986 and 1988 sales agreement, under section 3 (e) of the Arms Export Control Act. (p. 8/GAO Draft Report)

**DOD Response:** Concur.

Now on pp. 6-7.

**Recommendation 2:** The GAO recommended that the Secretary of State determine whether the transfer to the Contra supply operation may have constituted a substantial violation, and, if so, the Secretary report the transfer to the Congress as a violation of the 1986 sales agreement under section 3 (c) (2) of the act. (p. 9/GAO Draft Report)

**DOD Response:** Nonconcur. For the reasons cited in the response to Finding F, it is the Department of Defense position that the transfers were not a "substantial violation" that the Secretary of State should address.

**RECOMMENDATION TO THE DEPARTMENT OF DEFENSE**

Now on pp. 6-8.

**Recommendation 3:** The GAO recommended that the Defense Security Assistance Agency amend the standard foreign military sales agreement to include a provision requiring sales proceeds to be returned to the foreign military sales proceeds to be returned to the foreign military sales trust fund account of the recipient country. (pp. 9-10/GAO Draft Report)

**DOD Response:** Partially Concur. The Department of Defense shares the concern expressed by GAO that U.S. grant assistance

(Foreign Military Sales nonrepayable credit or Military Assistance Program) not be used as a vehicle to generate cash funds for a recipient. However, the circumstances in El Salvador are unique as it is one of the few situations in which significant quantities of fuel have been purchased with U.S. assistance funds. The GAO discussion does not reflect the unique nature of fuel and the general reciprocity under which most military and civilian airfields routinely refuel (with reimbursement) any aircraft which lands at their facility. Few commodities which the U.S. provides to Grant Aid recipients are likely to be provided to other parties as a part of "normal operations." As previously discussed by the GAO, action has been taken to terminate Salvadoran cash receipts from sales of Military Assistance Program financed fuel in El Salvador. Accordingly, this situation may not constitute a basis for a major revision of the Foreign Military Sales.

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future for consents to transfers on conditions of deposit of the proceeds of sale to the country's Foreign Military Sales trust fund accordingly.

**Matter for Congressional Consideration:**

**Item:** The GAO observed that, since the Salvadoran Government receives Military Assistance Program grant funds, rather than credits or guarantees, the consideration of penalties under the Arms Export Control Act is not applicable to the transfers of Military Assistance Program-funded fuel by the Salvadoran Air Force. The GAO noted that penalties under the Arms Export Control Act consist only of revoking eligibility for credits or guarantees and do not apply to Military Assistance Program grant funds. The GAO pointed out that, if the Congress wishes to include the revocation of eligibility for Military Assistance Program grant funds among the specific penalties that may be triggered by a substantial violation, it would need to amend the act. (p. 10/GAO Draft Report)

**DOD Response:** Concur. Such an amendment of the statute would be required to impose Military Assistance Program ineligibility.

Now on pp. 6, 20-21.

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The following are GAO's comments on the Department of Defense letter dated June 30, 1989.

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## GAO Comments

1. We revised figures on gallons and payments for fuel transferred to the Contra supply operation and the U.S. government based on additional information provided by Southern Air Transport after we released the draft report to DOD and the State Department for comments. See pages 17 and 23 of appendix I for revised figures.

2. Information available to us from Iran-Contra documents was available to the Departments of State and Defense at the time of their investigation of alleged fuel transfers to the Contra supply operation. Specifically, we refer to information contained in the Report of the Congressional Committees Investigating the Iran-Contra Affair (S. Rept. No. 100-216 and H. Rept. No. 100-433) and a report on El Salvador prepared by the Arms Control and Foreign Policy Caucus. Both reports were publicly available in November 1987 at the time of Senator Harkin's request to the State Department for an investigation. These reports contained key information, including the months that the Contra supply operation allegedly refueled at Ilopango and specific dates of Contra resupply flights. Senator Harkin specifically cited these documents in his request to State as the source of allegations that U.S.-funded fuel was improperly transferred to the supply operation.

3. DOD made comments similar to those of the State Department in concluding that the transfer of MAP-funded fuel to the Contra supply operation did not constitute a substantial violation of the 1986 sales agreement. We have deleted the applicable recommendation from the report.

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